

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 244

July 29, 1998, 5:29 p.m.
Page S-9207 Temp. Record

TREASURY APPROPRIATIONS/Warrantless & Unlimited Searches, Child Labor

SUBJECT: Treasury, Postal Service, and General Government Appropriations Bill for fiscal year 1999 . . . S. 2312.
Harkin amendment No. 3374 to the Thompson amendment No. 3353.

ACTION: AMENDMENT REJECTED, 46-53

SYNOPSIS: As reported, S. 2312, the Treasury, Postal Service, and General Government Appropriations Bill for fiscal year 1999, will provide \$29.924 billion in new budget authority (BA) for the Department of the Treasury, Postal Service, Executive Office of the President, and various independent agencies. This amount is \$4.598 billion more than provided in fiscal year (FY) 1998, and is \$3.095 billion more than requested. The large increase in funding is due to the addition of \$3.270 billion in contingent emergency funding to address the year 2000 (Y2K) computer date change conversion problem.

The Thompson amendment would substitute the following for section 642 of the bill: "The Federal Acquisition Regulation shall be revised, within 180 days of the date of enactment of this Act, to include the use of forced or indentured child labor in mining, production, or manufacturing as a cause on the lists of causes for debarment and suspension from contracting with executive agencies that are set forth in the regulation." (Section 642 of the bill will require the Labor Department to prepare a list of the type of items that it believes may have been mined, produced, or manufactured with forced or indentured child labor. Then, for each Federal contract issued for any item on that list, it will require the contractor to certify that it made a good faith effort to determine whether the item was mined, produced, or manufactured with forced or indentured child labor, and that it found no such evidence that such child labor was used. Also, the contractor will have to agree to cooperate fully and to give access to any Government official to the contractor's records, documents, persons, or premises if requested for the purposes of determining if the item sold was made with forced or indentured child labor. No warrant will be required, nor will any limitation be placed on any search, nor will any statutory safeguards, such as requiring probable cause or evidence for a search or requiring a process for challenging a search, be implemented. If the head of a Federal agency finds: that a contractor has given a false certification; that a contractor has furnished an item made with forced or indentured child labor; or that a contractor has not fully cooperated in allowing all of its records, documents, premises, and people to be searched, then he or

(See other side)

YEAS (46)			NAYS (53)		NOT VOTING (1)	
Republicans (1 or 2%)	Democrats (45 or 100%)		Republicans (53 or 98%)	Democrats (0 or 0%)	Republicans (1)	Democrats (0)
Jeffords	Akaka	Johnson	Abraham	Hutchinson	Helms- ^{3AN}	EXPLANATION OF ABSENCE: 1—Official Business 2—Necessarily Absent 3—Illness 4—Other SYMBOLS: AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay
	Baucus	Kennedy	Allard	Hutchison		
	Biden	Kerrey	Ashcroft	Inhofe		
	Bingaman	Kerry	Bennett	Kempthorne		
	Boxer	Kohl	Bond	Kyl		
	Breaux	Landrieu	Brownback	Lott		
	Bryan	Lautenberg	Burns	Lugar		
	Bumpers	Leahy	Campbell	Mack		
	Byrd	Levin	Chafee	McCain		
	Cleland	Lieberman	Coats	McConnell		
	Conrad	Mikulski	Cochran	Murkowski		
	Daschle	Moseley-Braun	Collins	Nickles		
	Dodd	Moynihan	Coverdell	Roberts		
	Dorgan	Murray	Craig	Roth		
	Durbin	Reed	D'Amato	Santorum		
	Feingold	Reid	DeWine	Sessions		
	Feinstein	Robb	Domenici	Shelby		
	Ford	Rockefeller	Enzi	Smith, Bob		
	Glenn	Sarbanes	Faircloth	Smith, Gordon		
	Graham	Torricelli	Frist	Snowe		
	Harkin	Wellstone	Gorton	Specter		
	Hollings	Wyden	Gramm	Stevens		
	Inouye		Grams	Thomas		
			Grassley	Thompson		
			Gregg	Thurmond		
			Hagel	Warner		
			Hatch			

she, at his or her sole discretion, may terminate a contract. Further, if the head of an agency finds that a contractor sold an item to the Government made with forced or indentured child labor, then he or she could debar or suspend that contractor from receiving a Federal contract for up to 3 years.

The Harkin amendment would strike all after the first word of the Thompson amendment and would reinsert the bill language, with two changes. First, it would have the Labor Department list only those items which it found had been mined, produced, or manufactured with forced or indentured child labor, instead of all items which it thought might have been made with such labor. Second, instead of requiring contractors for such items to submit to unlimited searches by any Government official, it would require them to submit to such searches from heads of Federal agencies and inspector generals of such agencies.

NOTE: After the rejection of the Harkin amendment, the underlying Thompson amendment was accepted by voice vote.

Those favoring the amendment contended:

The Harkin amendment has been offered to put back in the language on child labor, with a few minor modifications, that would be struck by the Thompson amendment. The main objection of our colleagues to that language is that they believe that it is unconstitutional. We disagree. We think that it is a very focused response to a very real problem. The amendment would require a list to be made of the types of items which the United States knows have in the past been made using child labor, and it would then require Federal agencies, anytime they contracted to buy any of the items on those lists, to make the contractors certify that they had not used child labor. Also, the contractors would have to agree to allowing Federal officials to search their records, premises, and employees if need be to verify that their certifications were correct. It is this last provision that our colleagues claim is unconstitutional under the Fourth Amendment protection against unreasonable searches and seizures. Our colleagues are incorrect. There is no need to put a probable cause requirement in this amendment because every contractor already has that right under the Constitution. In other words, if a government agency wanted to search a contractor's business, he would be free to refuse entry. The agency would then be required to seek a warrant from a court. A similar provision already exists under the Federal Acquisitions Regulations, title 10 of Armed Forces, 10 U.S.C. section 2313. The bill language is clearly constitutional and should be supported.

Those opposing the amendment contended:

The Harkin amendment would reinstate the bill language on child labor. First, it would require the Labor Department to publish a list of those types of items that it had determined in the past had been produced with child labor. We have no problem with that requirement. Second, it would bar Federal agencies from buying any item from a contractor who did not certify that the item was not produced with child labor. Again, we have no problem with that provision, though we note that it duplicates current law. It already is a cause for debarment to commit an offense indicating a lack of business integrity or business honesty that seriously and directly affects the responsibility of the Government contractor or subcontractor. Using child labor obviously indicates a lack of business integrity. Additionally, it is already illegal to place materials produced by child labor into interstate commerce. Guilty parties can be fined \$10,000 for each child employee and imprisoned for up to 6 months. Duplicative language is a minor problem with which we could live. However, this language then would go on to obligate the contractor to give complete, carte blanche authority for warrantless searches of his records, documents, facilities, and employees. The sweeping authority that would be granted by this amendment is unprecedented and blatantly unconstitutional. Under carefully circumscribed circumstances, warrantless administrative searches are permissible. Those circumstances include that statutory safeguards need to be provided, such as a probable cause requirement, an evidentiary requirement, and a requirement that a contractor have some sort of procedure for challenging an inspection. Under this language, no safeguards would be provided. Our colleagues have falsely stated that this authority is similar to section 2313 contracting authority. Without going into the intricate, complex details of that lengthy section, we will summarize it by explaining that under very limited circumstances, and only on certain kinds of contracts, a few certain circumstances can be dealt with using subpoena authority. In other words, that section does not launch a full-scale assault on the Fourth Amendment rights of contractors. As a substitute for the bill language (and the Harkin amendment), the Thompson amendment would simply add child labor to the list of reasons for debarment for Federal contractors. In our opinion, it was already a reason under the general definition, but making it more explicit should raise the level of awareness over the issue, which our colleagues have said is their goal. We know our colleagues would have liked us to retain the certification language, but we left that out in keeping with the contracting reforms that have been enacted recently. In the past couple of years, two major reforms of Government contracting have been enacted. One of the reforms that was enacted was to get rid of numerous certification requirements. The reason that reform was adopted was that the Governmental Affairs Committee found that those provisions just added costs for honest contractors and made no difference for dishonest contractors, who happily lied. The Harkin amendment would discard the Thompson amendment in favor of the original bill language. Clearly this amendment should be defeated.